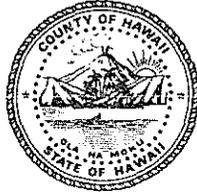


Harry Kim
Mayor



Christopher J. Yuen
Director

Roy R. Takemoto
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8288 • Fax (808) 961-8742

June 8, 2001

Phillip A. Harris
Olivia F. Harris
P.O. Box 1247
Captain Cook, Hawaii 96704

Dear Mr. and Mrs. Harris:

Additional Farm Dwelling Agreement

Applicants: Phillip A. Harris and Olivia F. Harris

Land Owners: Phillip A. Harris and Olivia F. Harris

Tax Map Key: (3) 8-2-011:005

Pursuant to authority conferred to the Planning Director by Chapter 25, Article 5, Division 7, Section 25-5-77 of the Zoning Code and Planning Department Rule 13, Farm Dwellings, we have reviewed your request for a second farm dwelling on the subject property. Your submittals, dated September 11, 2000, included the following information:

1. A notarized affidavit that the additional dwelling shall be used for farm-related purposes in the form of a proposed Additional Farm Dwelling Agreement (AFDA).
2. Name and address of the landowner.
3. A farm plan and a site plan depicting proposed agricultural activity that included a statement that this additional farm dwelling is needed to house workers in connection with the agricultural productivity or farming operation. No statement or evidence of any ongoing farming operation or agricultural activity was presented. Your farm plan included the following proposed agricultural activities:
 - (a) The planting of mango trees on approximately 65,175 sq. ft. of the subject parcel for commercial purposes.

Exhibit A

Phillip A. Harris
Olivia F. Harris
Page 2
June 8, 2001

- (b) The planting of unspecified ornamentals on approximately 41,368 sq. ft. of the subject parcel for commercial purposes.
 - (c) The planting of unspecified vegetables on approximately 5,913 sq. ft. of the subject parcel. The vegetable garden does not appear to be for commercial purposes.
4. A Real Property Tax Clearance from the Department of Finance showing that all real property taxes had been paid due the County of Hawaii up to and including December 31, 2000 on the two (2) CPR units contained within the subject parcel.

Findings:

1. In Chapter 205, Hawaii Revised Statutes, the State Land Use Law does not authorize residential dwellings as a permitted use in the State Land Use Agricultural district unless the dwelling is related to an agricultural activity or is a farm dwelling. **A farm dwelling as defined in Section 205-4.5, Chapter 205, HRS, means a single family dwelling located on and used in connection with a farm, including clusters of single family farm dwellings permitted within agricultural parks developed by the State, or where agricultural activity provides income to the family occupying the dwelling.** (emphasis added)
2. Your application for an AFDA was accepted in error by our letter dated October 2, 2000 and, because of the following deficiencies, should have been returned due to being incomplete:
 - (a) The farm plan submitted does not contain sufficient information for us to fairly assess the need for the requested additional farm dwelling.
 - (b) As requested in our letter dated October 2, 2000, no verification of your engagement in a farming operation or agricultural activity on the land was submitted.
3. In addition, the following agencies have submitted their comments as stated below:
 - (a) Department of Water Supply (Memorandum dated November 6, 2000):

Phillip A. Harris
Olivia F. Harris
Page 3
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“We have received the subject application and have the following comments.

Our records show that this property has an account with the Department.

As this lot was created with water variances No. 601, the Department has no objections to the application subject to the applicant being responsible for following the conditions of the approved variance. This means that the additional farm dwelling cannot be hooked up to any existing departmental water service.

Should there be any questions, please contact our Water Resources and Planning Branch at 961-8665.”

(b) Real Property Tax Office:

No comments were submitted.

(c) Department of Health (Memorandum dated October 11, 2000):

“By current rules, the subject lot is located in a Critical Wastewater Disposal Area. A lot size of five (5) acres or more are required for the use of a cesspool. Only one (1) cesspool would be allowed on the lot. A septic tank system would be needed if a second wastewater disposal system is needed on this lot.”

Decision:

In view of the above, your request to construct a second farm dwelling should have been returned to you due to being incomplete. Based on the information provided, this request would most likely be denied.

Pursuant to Planning Department Rules of Practice and Procedure, Rule 13-7, “The Planning Director shall render a decision (approve or deny) on the farm dwelling agreement petition within sixty days of receipt of the request, unless a longer period of time is agreed upon by the applicant. If the decision is not rendered within the specified period, the petition shall be deemed denied.” As stated in our September 11, 2000 letter of acceptance, our decision to deny your request for the additional farm dwelling should have been rendered no later than November 10, 2000. However, Hawaii Revised Statutes (HRS) §91-13.5(c), states that

Phillip A. Harris
Olivia F. Harris
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decisions for approval or denial of applications that are not rendered within the specified time limit are automatically approved. Therefore, due to our decision on your application being rendered 263 days after being submitted, your request is approved subject to the following conditions:

1. The second farm dwelling shall only be used to provide shelter for persons involved in the agricultural or farm-related activity on the building site.
2. The agreement shall run with the land and apply to all persons who may, now or in the future, use or occupy the additional farm dwelling.
3. All other applicable rules, regulations, and requirements of the Planning Department (including but not limited to the Zoning Code, Chapter 25, Department of Public Works, Department of Water Supply, Fire Department and State Department of Health and other reviewing agencies/divisions listed on the Building Permit Application.
4. Comply with Conditions C & D of Variance No. 601, which states the following:
 - "c. Existing and/or future dwellings not serviced by County water system constructed on the property shall have a minimum 6,000 gallon water storage facility for domestic consumption for water catchment. This catchment system shall adhere to the Department of Public Works, Building Division's "Guidelines for Owners of Rain Catchment Water Systems" as well as the State Department of Health requirements related to water testing and water purifying devices.
 - d. Provide a water supply system sufficient for fire fighting consisting of a minimum 3,000 gallons of water per existing and/or proposed future dwelling on the property meeting with the approval of the Hawaii County Fire Department. If dwellings are spaced closer than 50 feet apart, 4,000 gallons of water per dwelling will be required."
5. Your Additional Farm Dwelling Agreement has been approved based entirely on proposed agricultural activity as summarized previously in this letter. It is required that the First Party (owners and lessees) to the Agreement shall have implemented at least 75% of the proposed farm plan, exclusive of the proposed vegetable garden, within

Exhibit A

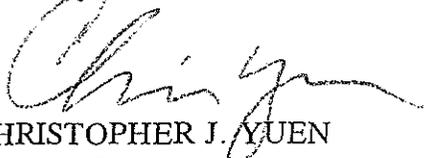
Phillip A. Harris
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Page 5
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three (3) years of approval of the building permit for the additional farm dwelling. Time extensions and modifications may be allowed by the Second Party (County of Hawaii Planning Department) of the Agreement for good cause shown by First Party.

6. The First Party shall allow the Second Party or its representative to inspect the farm upon reasonable prior notice.
7. This Additional Farm Dwelling Agreement shall be valid for a period of two (2) years from the date of this approval letter to secure a building permit for the additional farm dwelling. Failure to secure a building permit for this additional farm dwelling on or before June 1, 2003 may cause the Director to initiate proceedings to invalidate the AFDA.

Should you have questions or require further information, please feel free to contact Larry Brown of my staff at 961-8288.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

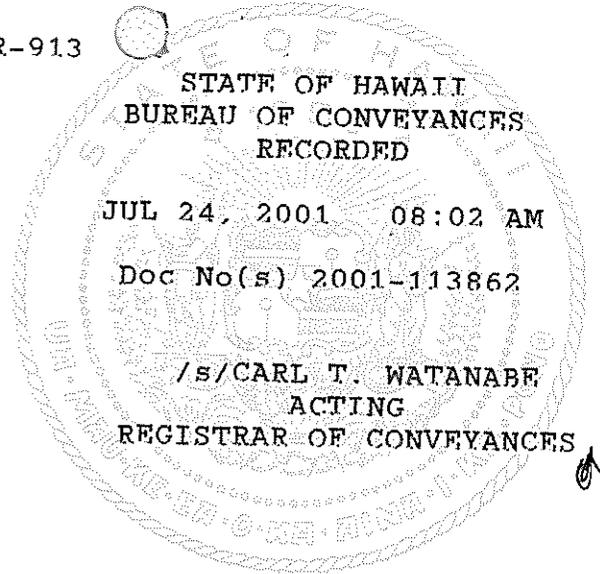
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Enclosure

xc: Mr. Milton Pavao, DWS
Mr. Mike McCall

Exhibit A

78
R-913



40

AFTER RECORDATION, RETURN BY MAIL TO:

County of Hawaii Planning Department
25 Aupuni Street, Room 109
Hilo, Hawaii 96720

TITLE OF DOCUMENT:

ADDITIONAL FARM DWELLING AGREEMENT

PARTIES TO DOCUMENT:

FIRST PARTY: PHILLIP A. HARRIS and OLIVIA F. HARRIS

SECOND PARTY: COUNTY OF HAWAII

PROPERTY DESCRIPTION:

TMK: (3) 8-2-011:005

ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this 31st day of May, 2001, by and between PHILLIP A. HARRIS and OLIVIA F. HARRIS herein called the "First Party," whose mailing address is P.O. Box 1247, Captain Cook, Hawaii 96704, and the COUNTY OF HAWAII, herein called the "Second Party."

IT IS HEREBY AGREED that the First Party may construct an additional farm dwelling located on the property described by Tax Map Key (3) 8-2-011:005 situated within the State Land Use Agricultural district and zoned Agricultural (A-5a) by the Second Party.

IT IS HEREBY ACKNOWLEDGED that the First Party is the legal owner of the property above described.

IT IS HEREBY FURTHER AGREED that this approval to construct an additional farm dwelling is given subject to the following conditions:

1. The additional farm dwelling shall be used to provide shelter to person(s) involved in the agricultural or farm-related activity on the property. Family members who are not engaged in agricultural or farm-related activity are allowed to reside in the farm dwelling.
2. The agreement shall run with the land and apply to all persons who may now or in the future use or occupy the additional farm dwelling.
3. This agreement shall include any and all conditions specified in the Additional Farm Dwelling Agreement letter, attached to this document as Exhibit "A".

IT IS HEREBY FURTHER AGREED that if this agreement is with a lessee, the legal owner shall be a party to this agreement.

IT IS HEREBY FURTHER AGREED that should the pertinent provisions of the State and County laws and rules and regulations change to authorize said farm dwelling, upon request of the First Party, this Agreement may be reconsidered for possible amendment and/or severance.

IT IS HEREBY FURTHER AGREED that if the property is situated within the State Land Use Agricultural district, the Second Party may impose a fine of not more than \$5,000 for violation of Section 205-4.5, Hawaii Revised Statutes. If the violation is not corrected within six months of such citation and the violation continues, a citation for a new and separate violation may be imposed. There shall be a fine of not more than \$5,000 for any additional violation. The Second Party may also impose fines for any violation of Chapter 25, Hawaii County Code, as amended, in accordance with the procedures and fine schedule outlined in Division 3, Article 2, of said code.

IN CONSIDERATION OF THE AFORESAID, the Second Party hereby approves this Agreement as being in conformity with Sections 205-2 and 205-4.5 of the Hawaii Revised Statutes, relative to permitted uses within the State Land Use Agricultural district. This Agreement is also in conformance with Chapter 25, Hawaii County Code, as amended.

IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first above written.

FIRST PARTY:



Phillip A. Harris, Legal Owner



Olivia F. Harris, Legal Owner

SECOND PARTY:



Christopher J. Yuen, Planning Director
County of Hawaii Planning Department

STATE OF HAWAII)
) SS.
COUNTY OF HAWAII)

On this 19th day of June, 2001 before me personally appeared PHILLIP A. HARRIS and OLIVIA F. HARRIS to me known to be the person(s) described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

Pat Campbell Pat Campbell
Notary Public, State of Hawaii

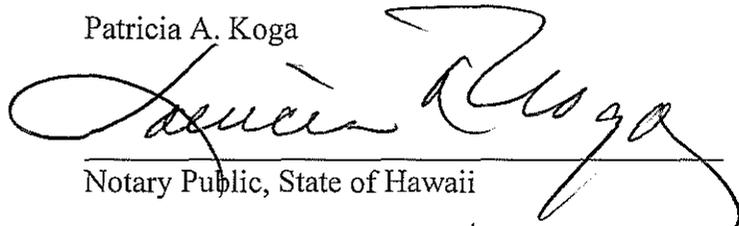
L.S.

My commission expires: Sept 2, 2002

STATE OF HAWAII)
) SS
COUNTY OF HAWAII)

On this 12th day of July, 2001 before me personally appeared Roy R. Takemoto, to me personally known, who, being by me duly sworn, did say that he is the Deputy Planning Director of the County of Hawaii; and that the Planning Department of the County of Hawaii has no corporate seal; and that the instrument was signed on behalf of the Planning Department of the County of Hawaii, a government agency, and said Roy R. Takemoto acknowledged the instrument to be the free act and deed of said Planning Department, County of Hawaii.

Patricia A. Koga



Notary Public, State of Hawaii

My commission expires: 7/17/02 *V.S.*

- MANGO: ① = 8100
 ② = 15000
 ③ = 5250
 ④ = 15600
 ⑤ = 18975
 ⑥ = 2250

65,175 #

- ORNAMENTALS: ⑦ = 4950
 ⑧ = 825
 ⑨ = 7150
 ⑩ = 3300
 ⑪ = 1375
 ⑫ = 1238

41,368 #

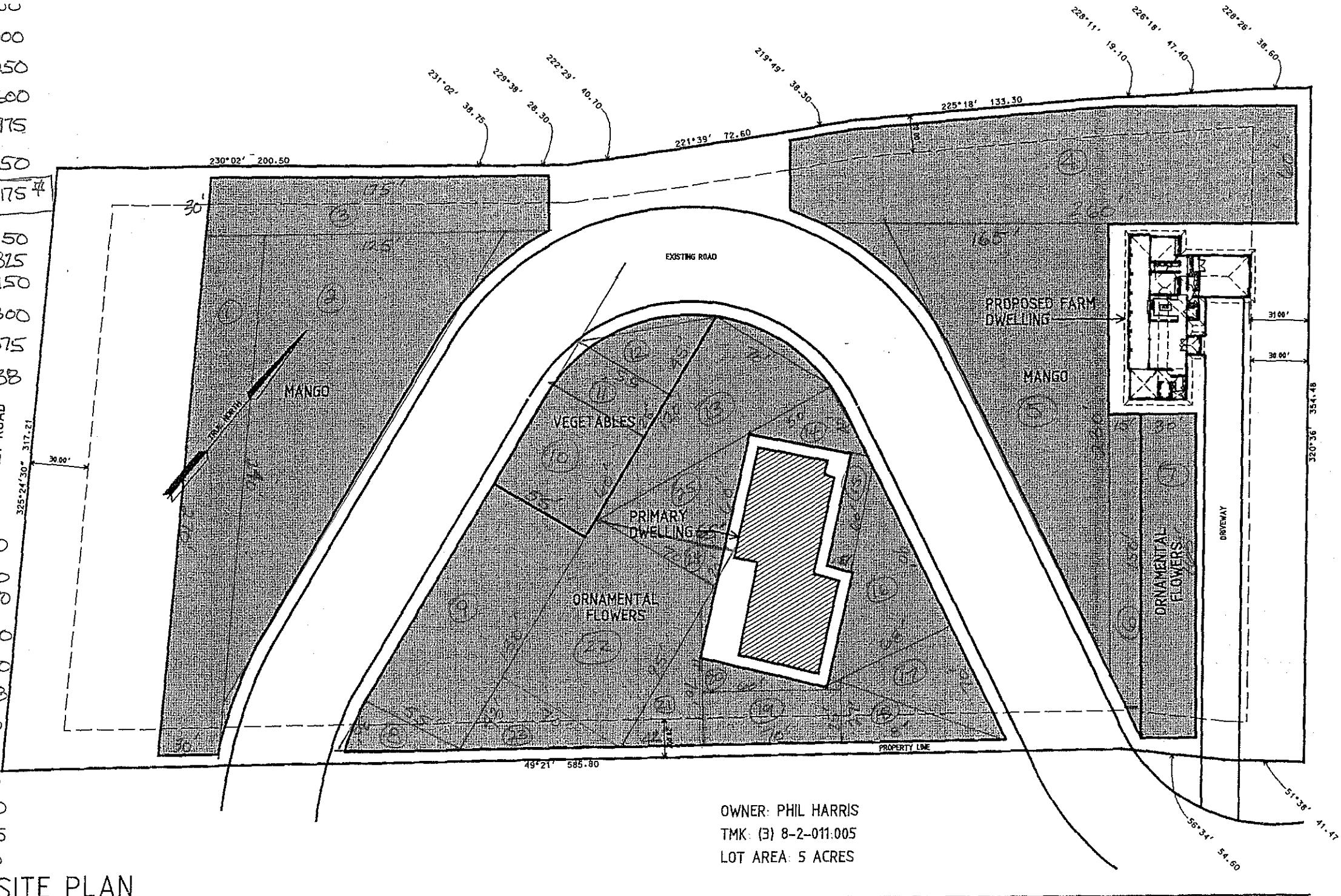
5,913 #

- ⑬ = 4200
 ⑭ = 1000
 ⑮ = 780
 ⑯ = 3060
 ⑰ = 4760
 ⑱ = 108
 ⑲ = 1750
 ⑳ = 510
 ㉑ = 1470
 ㉒ = 6650
 ㉓ = 1505
 ㉔ = 700
 ㉕ = 1950

ORIGINATIONS BY L. BROWN ON 5/29/61

SITE PLAN

SCALE 1"=50' 00"
 2011.12.28 10:00 AM by 13 09 00 01 00 00 00



OWNER: PHIL HARRIS
 TMK: (3) 8-2-011.005
 LOT AREA: 5 ACRES